

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

February 23, 2007

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.:06OD-024

Oahu

Final Approval of the Acquisition of Private Lands and Set Aside to Department of Land and Natural Resources, Division of Forestry and Wildlife, for Addition to the Existing Honolulu Watershed Forest Reserve for Watershed Protection and Research, Native Species Habitat Restoration, Endangered Species Recovery, and Forest Recreation, Education and Management, Moanalua, Honolulu, Oahu, Tax Map Keys: (1) 1-1-12:02 & 15 and (1) 1-1-13:01 & 02.

Final Approval of the Acquisition of Private Lands and Set Aside to the City and County of Honolulu for Park and Recreation Purposes, Moanalua, Honolulu, Oahu, Tax Map Keys: (1) 1-1-12:35.

APPLICANT AGENCY:

Department of Land and Natural Resources, Division of Forestry and Wildlife; and

City and County of Honolulu

PRIVATE LANDOWNER:

Current owner is Moanalua Valley Properties LLC, a domestic limited liability company whose mailing address is 999 Bishop Street, Suite 2800, Honolulu, Hawaii, 96813.

However, The Trust for Public Land (TPL), a California nonprofit public benefit corporation, whose business address is 116 New Montgomery Street, 4th Floor, San Francisco, California 94105, entered into a Purchase and Sale Agreement dated April 7, 2006 with the current owners.

LEGAL REFERENCE:

Sections 107-10, 171-11 and 171-30, Hawaii Revised Statutes, as amended.

LOCATION:

Privately-owned lands situated at Moanalua, Honolulu, Island of Oahu, identified by Tax Map Key: (1) 1-1-12:02, 15 & 35 and (1)

1-1-13:01 & 02, as shown on the attached maps labeled Exhibit A and Exhibit B.

AREA:

3,716.12 acres, more or less.

ZONING:

State Land Use District: Conservation District
City and County of Honolulu CZO: P-1, Preservation

CURRENT USE:

The entire site is primarily vacant and unimproved. However, TMK (1) 1-1-12:35 ("Parcel 35") is leased to the City & County of Honolulu ("City") for park and recreation uses. Whereas existing park facilities are leasehold improvements constructed by the City, these improvements are not considered in the proposed acquisition.

CONSIDERATION:

The fair market value of the subject site was determined by an independent appraiser to be \$5,570,000. The appraisal report has been reviewed and approved by the Chairperson. Nonetheless, TPL has agreed to convey the subject site to the State for \$4,600,000.

PURPOSE:

With the exception of Parcel 35, the acquired lands will be for addition to the existing Honolulu Watershed Forest Reserve for watershed protection and research, native species habitat restoration, endangered species recovery, and forest recreation, education and management.

Parcel 35 will be acquired for public recreation purposes.

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

Pursuant to Section 343-5(a)(1), HRS, an environmental assessment (EA) is not required where State or county funds are being used for the acquisition of unimproved real property. As the subject lands are unimproved, an EA is not required. Inasmuch as the Chapter 343 environmental requirements apply to Applicant's use of the lands, the Applicant shall be responsible for compliance with Chapter 343, HRS, as amended.

APPLICANT REQUIREMENTS:

DOFAW has been required to provide an appraisal report to determine the value of the properties to be acquired. This has been completed.

Trust for Public Land has been required to:

- 1) Provide survey maps and descriptions for the privately-owned property according to State DAGS standards and at no cost to the State;
- 2) Obtain a title report for the privately-owned property at no cost to the State and subject to review and approval by the Department;
- 3) Pay for and conduct a Phase I environmental site assessment and, if this Phase I identifies the potential for hazardous materials release or the presence of hazardous materials, conduct a Phase II environmental sampling and analysis plan and perform any and all remediation, abatement and disposal as may be warranted and as satisfactory to the standards required by the Federal Environmental Protection Agency and/or the State Department of Health, all at no cost to the State and to the satisfaction of the Department. The Phase I has been completed.

BACKGROUND:

At its meeting of February 10, 2006, under agenda item D-10, the Board of Land and Natural Resources ("BLNR") approved in principle the acquisition of 3,716.12 acres of private land situated in Moanalua, Honolulu, Oahu and further identified as Tax Map Keys (1) 1-1-12:02, 15 & 35 and (1) 1-1-13:01 & 02. Public purpose for which the BLNR approved the proposed acquisition was for watershed protection and research, native species habitat restoration, endangered species recovery, and forest recreation, education and management.

The Department of Land and Natural Resources ("DLNR"), Division of Forestry and Wildlife ("DOFAW") is requesting BLNR's final approval of the proposed acquisition.

Moanalua Valley contains five distinct forest types and over nine miles of meandering stream. Although none of the five native natural communities are considered rare, they are significant because they provide habitat for endangered plants and animals.

Moreover, contained within Moanalua Valley are culturally significant sites, one of which is listed on the National Register of Historic Places.

Funding for the proposed acquisition is provided by Act 178, State Laws of Hawaii, Item K-7, which appropriated \$3,000,000 for the fee simple land acquisition of Moanalua Valley. In addition, on September 27, 2005 the U.S. Fish & Wildlife Service ("USFWS") announced \$1,634,364 of Recovery Land Acquisition ("RLA") grant money is available for this acquisition.

REMARKS:

At its meeting of February 10, 2006, under agenda item D-10, staff reported that prior to the proposed conveyance of land, results and/or findings of all due diligence reports and all draft agreements pertaining to the proposed acquisition would be presented for BLNR's review and final approval.

Accordingly, presented herein for your consideration are summaries of results and comments based on the due diligence review.

- 1) Appraisal Report. John Child & Company, Appraisers and Consultants ("Appraiser") was contracted by DLNR to perform an independent appraisal report pursuant to a scope of work provided by the Department of Interior, Appraisal Services Director. The scope of work provided was required by the USFWS for use of the RLA grant money. The appraiser opined that market value for the entire 3,716.127-acre subject site was \$5,570,000, effective September 11, 2006. A pro rata allocation of the estimated market value was assigned to each individual parcel by the appraiser, as summarized below:

Tax map key	Acreage	Pro Rated Amount
1-1-12:02	16.592	\$ 25,000
:15 [1]	52.989	79,000
:40 [1]	735.745	1,103,000
:35	2.848	4,000
1-1-13:01	2,905.953	4,356,000
:02	2.000	3,000
Total	3,716.127	\$5,570,000

- 2) Survey Maps & Description: TPL provided draft descriptions of the subject properties. Based on their review, Department of Accounting and General Services Survey Division ("DAGS Survey") provided comments to TPL. Subject to DAGS Survey approval, amended descriptions provided by TPL may be used in lieu of the CSFs typically prepared.
- 3) Title Report: TPL has provided preliminary title reports dated January 24, 2007, prepared by Title Guaranty of Hawaii, Inc. Based on a review of these title reports and appropriate Transfer Certificate of Titles ("TCT"), none of the encumbrances of record appear to materially prohibit the effective use of the property as a forest reserve. However, staff notes two existing lease agreements encumbering portions of the subject site.

[1] Pursuant to public records TMK 1-1-12:15 has an area of 788.734 acres. However, the title report prepared by Title Guaranty of Hawaii, Inc. and dated April 24, 2006, notes indication from the Office of the Tax Assessor that the Tax Key for Lot 2970-A-1 (formerly a portion of Parcel 15) will be 1-1-12:40 for Fiscal year 2006-2007. Accordingly, in his report the independent appraiser identifies Parcels 15 and Parcel 40 separately, as noted.

- a. Parcel 35 is encumbered by an initial 20-year lease to the City and County of Honolulu ("City") for a nominal rent of \$1 per year. Although this lease commenced on July 7, 1983, the lease agreement continues on an automatic annual renewal basis, pursuant to lease terms.

Whereas lease terms restrict use to public park and/or recreational purposes only, which is not permitted under the RLA grant conditions, DLNR proposes that no RLA monies be applied toward the acquisition of Parcel 35. Whereas Parcel 35 was allocated a pro rated value of \$4,000 by the appraiser, Parcel 35 shall be acquired using only CIP funds unencumbered by RLA grant restrictions.

Subsequently, DLNR plans to terminate the existing lease agreement with the City and set aside Parcel 35 to the City for public park and/or recreation purposes. The City Department of Parks and Recreation has expressed its support of this proposal in a letter dated January 31, 2007, which is attached as Exhibit C.

Considering the amount of CIP matching funds available, USFWS supports the proposed scenario and has advised that no change to the grant proposal is necessary.

- b. On August 20, 1964, Hawaiian Electric Company, Inc. entered into a 2-year lease for access and utility purposes. The encumbered area is limited to a continuous 10-foot wide alignment through Parcel 15, as delineated on multiple land court maps. Lease terms provide for automatic annual renewals at an annual rent of \$1, until terminated by either the Lessee or Lessor. Staff recommends accepting the conveyance of land subject to the existing lease.
- 4) Phase I Environmental Site Assessment: TPL has provided a Phase I Environmental Site Assessment prepared by Tetra Tech EM Inc. ("Tetra Tech") and dated August 10, 2006. Based on its review of environmental reports and historic records, site reconnaissance, and interviews, Tetra Tech reported that no recognized environmental concerns on the subject property were identified.
 - 5) Additional Due Diligence: TPL volunteered an abundant amount of additional due diligence for the Department's review, which included monthly manager's reports, general correspondence, archaeological, botanical, habitat and historical reports, rock fall hazard/mitigation reports, etc.

A review of these documents by staff and the Department of the Attorney General raised a few concerns, discussed below.

- a. Documents provided draw attention to the discovery of an oil drum and abandoned automobile found on the site, and the use of herbicides and organic insecticides. In addition,

although documents discussed proposed investigations for possible hazardous materials resulting from military use related to WWII, no documentation was provided confirming or denying any actual investigation being conducted or hazardous materials being found.

It is noted that these occurrences happened prior to the establishment of CERCLA. Nonetheless, none of these occurrences are discussed within the Phase I Environmental Site Assessment provided by Tetra Tech.

- b. Numerous items of correspondence and files identify rock fall hazards and mitigating actions performed on portions of the subject property abutting residential properties. Included within these files is a Rock Fall Mitigation Closure report dated January 25, 2005, which recommends continued annual inspections of the identified mitigated areas at an estimated cost of \$1,000 per year. Staff recommends that DOFAW continue annual inspections pursuant to the independent contractor's recommendation.
- c. Documentation indicates prior occurrences of debris from subject lands falling into and/or damaging drainage easements within adjacent residential properties. Pursuant to deed terms under which these residential lots were conveyed, maintenance of easement areas purportedly remains the responsibility of the encumbered property owner. Nonetheless, debris originating from the subject lands to be acquired may result in future maintenance liabilities for DOFAW.

DOFAW has been made aware of the above described property conditions and agrees to accept the land as described. With respect to any falling rocks and debris, and any resulting damages, DOFAW is willing to be responsible for any further testing, studies and mitigation measures. With respect to the hazardous materials issue discussed above, TPL shall be responsible (whether before and after closing) for any further testing, studies, remediation measures, etc.

- 6) Comments: Comments regarding the proposed acquisition and set asides to DOFAW and the City and County of Honolulu were solicited from Department of Hawaiian Home Lands, DLNR Office of Conservation and Coastal Land, Historic Preservation and Office of Hawaiian Affairs. No objections were received.
- 7) Documents: TPL and the Department have agreed to amend the hazardous materials testing provision paragraph in the State's standard warranty deed document form as follows:

~~AND, the Grantor warrants that if any lender or governmental agency shall ever require testing to ascertain whether there has been any release of hazardous materials by Grantor on or adjacent to the Property, as determined by Grantee in its~~

~~sole discretion, then the Grantor shall be responsible for the reasonable costs thereof. In addition, Grantor shall execute affidavits, representations and the like from time to time at Grantee's request concerning Grantor's best knowledge and belief regarding the presence of hazardous materials on the Property placed or released by Grantor.~~

Staff notes that this amendment to the Deed has been approved by the BLNR for TPL in prior conveyances.

Additional deed restrictions are required due to DOFAW's use of the USFWS RLA grant and TPL's use of an Army Use Compatible Buffer grant, which TPL intends to use to help fund its acquisition from the current private landowner. Moreover, TPL has requested the State enter into an Agreement of Sale document consistent with sale terms described.

Finalized warranty deed and Agreement of Sale documents shall remain subject to Department and Department of the Attorney General approval.

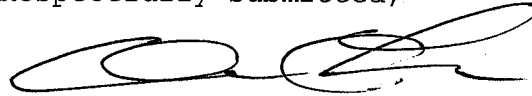
RECOMMENDATION: That the Board:

1. Authorize the acquisition of the subject private lands under the terms and conditions cited above which are by this reference incorporated herein and subject further to the following:
 - A. The terms and conditions of an Agreement of Sale document;
 - B. The terms and conditions of a Warranty Deed document form, as may be amended from time to time;
 - C. Review and approval by the Department of the Attorney General;
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
2. Approve of and recommend to the Governor the issuance of an executive order setting aside lands currently identified as TMKs (1) 1-1-12:02 & 15 and (1) 1-1-13:01 & 02 to the Division of Forestry and Wildlife for addition to the Honolulu Watershed Forest Reserve under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
 - A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of

either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;

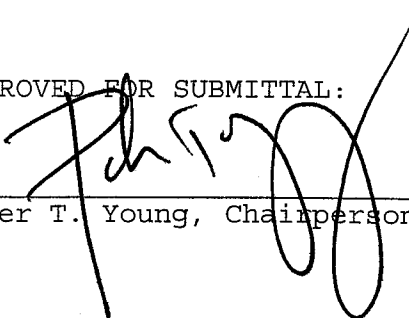
- C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.
3. Authorize DOFAW to conduct a public hearing to add approximately 3,713.279 acres at Moanalua to the Honolulu Watershed Forest Reserve, under provisions of HRS §183-11, Government Land for Forest Reserves and §183-12, Notice of Hearing.
4. Authorize the Chairperson to set the date and time for a public hearing, and appoint a Hearing Master.
5. Approve of and recommend to the Governor the issuance of an executive order setting aside lands currently identified as TMKs (1) 1-1-12:35 to the City and County of Honolulu under the terms and conditions cited above, which are by this reference incorporated herein and subject further to the following:
- A. The standard terms and conditions of the most current executive order form, as may be amended from time to time;
 - B. Disapproval by the Legislature by two-thirds vote of either the House of Representatives or the Senate or by a majority vote by both in any regular or special session next following the date of the setting aside;
 - C. Review and approval by the Department of the Attorney General; and
 - D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State.

Respectfully Submitted,

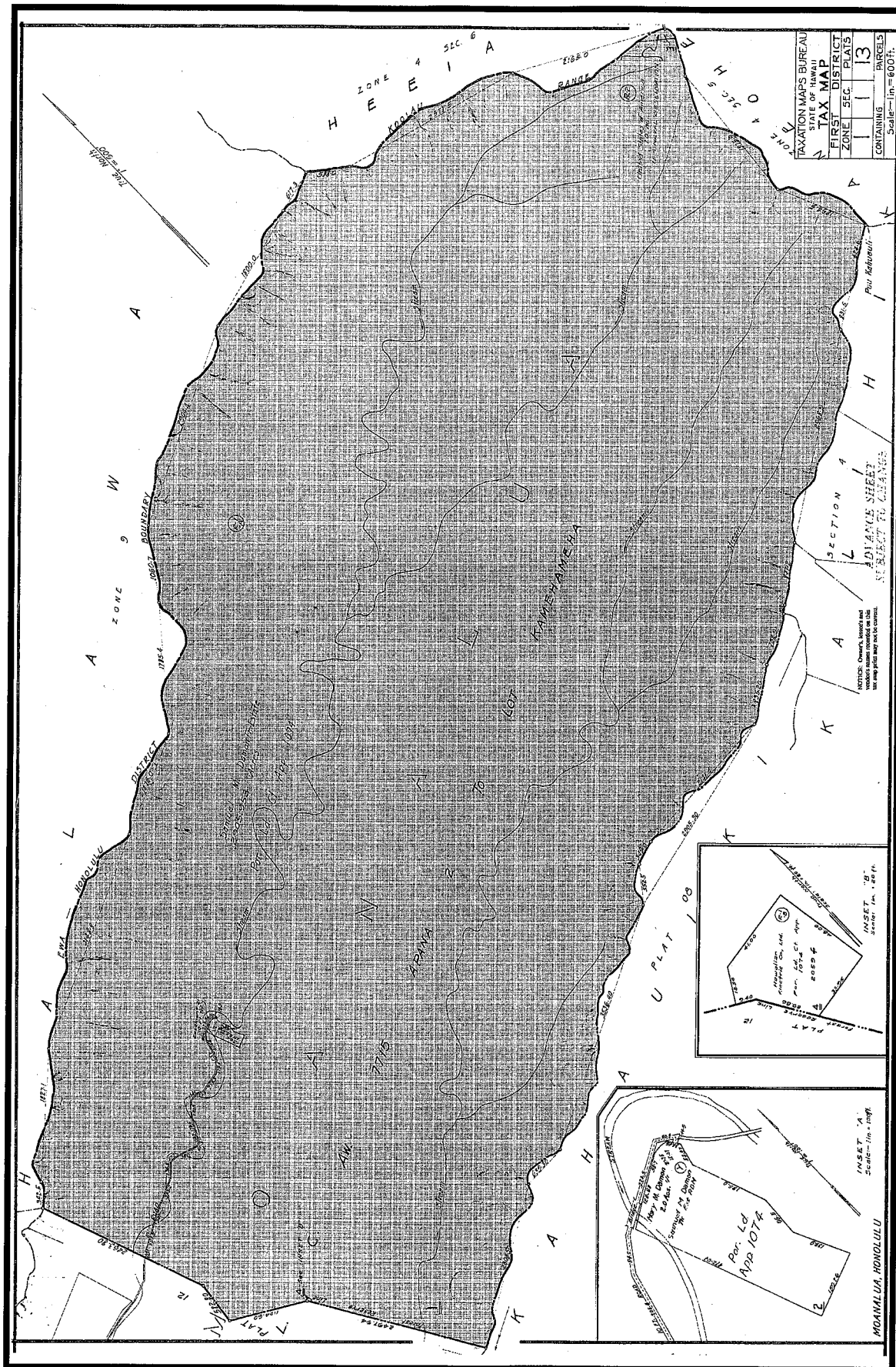


Gavin Chun
Project Development Specialist

APPROVED FOR SUBMITTAL:

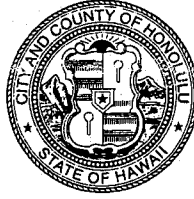


Peter T. Young, Chairperson



DEPARTMENT OF PARKS AND RECREATION
CITY AND COUNTY OF HONOLULU

KAPOLEI HALE • 1000 ULUOHIA STREET, SUITE 309 • KAPOLEI, HAWAII 96707
TELEPHONE: (808) 692-5561 • FAX: (808) 692-5131 • INTERNET: www.honolulu.gov



MUFI HANNEMANN
MAYOR

RECEIVED
LAND DIVISION

2007 FEB -1 A 8:37
LESTER K.C. CHANG
DIRECTOR
DANA TAKAHARA-DIAS
DEPUTY DIRECTOR

DEPT. OF LAND &
NATURAL RESOURCES
STATE OF HAWAII

January 31, 2007

Mr. Russell Y. Tsuji, Administrator
State of Hawaii
Department of Land and Natural Resources
Land Division
Post Office Box 621
Honolulu, Hawaii 96809

Dear Mr. Tsuji:

Subject: Set Aside of Land Currently Leased by the City and County of
Honolulu for Public Park and/or Recreation Purposes, Situated at
1857 Ala Aolani, Moanalua, Honolulu; Further Identified as
TMK (1) 1-1-12:35

The Department of Parks and Recreation has no objection to the proposed
termination of the existing lease agreement and proposed set aside of the subject
property (Moanalua Valley Neighborhood Park) via issuance of a Governor's
Executive Order.

Should you have any questions please contact Mr. John Reid, Planner,
at 692-5454.

Sincerely,

A handwritten signature in black ink, appearing to read "Lester K. C. Chang", is written over the printed name and title.

LESTER K. C. CHANG
Director

LKCC:mk
(191985)

cc: Mr. Craig Mayeda, PMRS Administrator
Ms. Rosalind Young, D-2 Manager

EXHIBIT "C"